

North Somerset Council

REPORT TO THE EXECUTIVE

DATE OF MEETING: 26TH JUNE 2018

**SUBJECT OF REPORT: LOCAL GOVERNMENT OMBUDSMAN DECISION:
ENABLEMENT POLICY**

TOWN OR PARISH: ALL

**OFFICER/MEMBER PRESENTING: GERALD HUNT HEAD OF
COMMISSIONING**

KEY DECISION: YES

RECOMMENDATIONS

The Executive is asked to note the findings of the Local Government Ombudsman's (LGO) report and endorse actions taken to fulfil all recommendations of the report in Appendix One.

To approve the interim amendments to the Council's charging policy in relation to the social care pathway and interim intermediate care offer.

To note that further work will be required with the new BNSSG CCG to more closely align policy and resource of the residential intermediate care offer in North Somerset.

1. SUMMARY OF REPORT

The report is a required response to the LGO's recommendations of an adult care charging complaint. Mr X complained about his father's care charges. The LGO's finding was that the Council was at fault causing an injustice and made a series of recommendations that are being actioned. One action was to report to the Executive on amendments to its adult care charging policy in relation to its enablement service.

2. POLICY

The Corporate Plan's health and wellbeing vision includes to;
Enable residents to make healthy choices and promote active lifestyles which reduce ill-health and increase independence. The Council's enablement service was developed in 2011 as a response to benchmarking that indicated that authorities throughout the South West and North Somerset specifically, used a disproportionately high number of care homes placements and the default provision had become a permanent care home placement with alternative provision not adequately developed. The policy designed jointly with the CCG created a two-stage contract to replace the existing permanent care home contract which required replacement following an arbitration legal challenge from a group of

providers. Stage one was a six week or longer enablement contract for care home providers with incentives for positive enablement, followed by a steady state contract. The enablement pathway offered a therapeutic service to support *service user reach their full potential as they leave enablement and either remain in a care home (perhaps being able to move from nursing care to residential care) or return home either independently or with a package of homecare*". With support from a multi-disciplinary team funded by the new Better Care Fund, the aim was to delay service users' decision making. It was never viewed as an *intermediate care service, as the service was utilised by service users who have been clearly assessed as requiring permanent residential or nursing care at the initial assessment stage*. The Council enablement offer "*recognised that although the client has been assessed for residential and nursing care we have encouraged the care providers and clients to recognise the enablement potential of all service users throughout the lifetime of the placement*". The policy achieved success criteria of up to 20% returning home from an enablement placement and a further 10% moving down from nursing to residential. Inevitably as the policy influenced thinking about the appropriateness of a care home placement, these outcomes have significantly reduced over time. The policy was identified as innovative and acclaimed by the Council's peer review process in 2013 and more recently praised by NHS England for offering a more robust therapeutic offer. It also has seen the Council's reliance on care home provision reduce significantly despite ongoing demographic demand pressures.

The LGO however concluded that that charging for the enablement service was a fault as they determined that the policy was indistinguishable from an intermediate care service that charging under the Care Act prohibited. Critical to the LGO's finding is the definition of intermediate care.

Statutory guidance says "*There is a tendency for the terms 'reablement', 'rehabilitation' and 'intermediate care' to be used interchangeably. The National Audit of Intermediate Care categorises 4 types of intermediate care:*

- *crisis response – services providing short-term care (up to 48 hours)*

- *home-based intermediate care – services provided to people in their own homes by a team with different specialities but mainly health professionals such as nurses and therapists*

- *bed-based intermediate care – services delivered away from home, for example, in a community hospital*

- *reablement – services to help people live independently which are provided in the person's own home by a team of mainly care and support professionals". (Care and Support Statutory Guidance, section 2.12)*

In North Somerset, reablement services are available to all for up to six weeks free of charge, as part of our domiciliary care commissioned services.

Statutory guidance states intermediate care services "*are provided to people, usually older people, after they have left hospital or when they are at risk of being sent to hospital. Intermediate care is a programme of care provided for a limited period of time to assist a person to maintain or regain the ability to live independently – as such they provide a link between places such as hospitals and people's homes, and between different areas of the health and care and support system – community services, hospitals, GPs and care and support*". (Care and Support Statutory Guidance, section 2.14)

Further guidance defines bed-based intermediate care specifically as "*Assessment and interventions provided in a bed-based setting, such as an acute hospital, community hospital, residential care home, nursing home, stand-alone intermediate care facility,*

independent sector facility, local authority facility or other bed-based setting. Bed-based intermediate care aims to prevent unnecessary admissions to acute hospitals and premature admissions to long-term care, and to support timely discharge from hospital. For most people, interventions last up to 6 weeks. Services are usually delivered by a multidisciplinary team but most commonly by healthcare professionals or care staff (in care homes)". (Intermediate care including reablement, National Institute for Health and Care Excellence, 2017)

3. DETAILS

Mr X's father, Mr Y, lived with Mr X. Mr Y had an amputation in hospital. Mr Y received time-limited support from carers, occupational therapy and physiotherapy in a residential care home to help him recover from an operation to amputate his leg. He subsequently returned to his son's home, where he had lived before his hospital admission, 14 weeks later. The LGO concluded that Mr Y was not assessed for permanent residential care, which was required under the enablement policy. The care assessment for Mr Y should have evidenced that Mr Y required a residential or nursing placement to assess the pathway, but this was not evident in the plan. Similarly, the LGO concluded that the definition of 'enablement' on the Council's leaflet did not make this distinction and concluded that the service was indistinguishable from a bed-based intermediate care service.

The Council's policy to charge for the first six weeks of enablement, in cases where that service is aimed at supporting the person to return home, does not meet the requirements of the Care Act. This the LGO found as a fault. The Council should not have charged Mr Y for the first six weeks of intermediate care and it was at fault in doing so. Mr Y paid £120.40 a week to the Care Home for the first six weeks of his intermediate care. This means Mr Y paid £722.40 more than he should have to the Care Home.

Critical to the case of Mr Y, and the conclusion of the LGO was the limited availability of alternative residential bed based intermediate care free of charge for up to six weeks. In North Somerset a small number of NHS commissioned community inpatient beds are provided in either a nursing or residential care home setting and supported therapeutically by North Somerset Community Partnership. These services, provided under the Discharge to Assess 2 pathway are intended to support hospital discharge and community arrangements. In Mr Y's case this would have been the appropriate intermediate care offer given his condition, however he was screened out of this service at Weston General Hospital as it was felt that there was limited potential for further rehabilitation and he was found medically fit for discharge. This screening was not challenged and given the number of intermediate care beds were limited at the time to 8 beds, the LGO did not consider this a satisfactory alternative. With the benefit of hindsight, it is recognised Mr Y should have been eligible to access this pathway, prior to any enablement service.

Recent NHS capacity planning across the BNSSG footprint has identified a wide discrepancy between the residential or nursing home resources available to support Discharge to Assess 2 pathways. We await the outcome of the capacity modelling with the anticipation that the resources will be more equitably deployed by the new CCG across its footprint based on needs. In the meantime, the scarcity of the resource in North Somerset supported the LGO's conclusion that this was not an adequate alternative offer to distinguish from the enablement pathway.

Amendments to the enablement pathway have been put in place and an interim intermediate policy established to ensure the LGO's recommendations are complied with in full.

Appendix Two outlines the interim social care pathway and associated guidance with regards to charging and Appendix Three outlines the interim intermediate care policy. It is hoped that with the urgent resolution of the Discharge to Assess 2 pathway will integrate these resources more effectively, but in the interim, the social care pathway will consolidate the intermediate care offer from the Council when a maximising independence service will be offered to individuals identified with the potential to improve. These will form either a reablement offer in the community or bed based intermediate care offer free of charge for up to 42 days.

4. CONSULTATION

The timeline for compliance with the LGO's recommendations has limited the opportunity to consult. The changes to charging policy and care pathways will require new information guidance for service users and amendments to existing leaflets and the website. Further monitoring of the unintentional consequences of these changes, e.g. for some self funders with an identified ongoing care need are likely to now pay the full fee and the fee charged will no longer be fixed at the Council's enablement fee level.

Changes to contracts will involve consultation with care providers, but initial indications are that care providers will welcome the opportunity of more long term ongoing placements.

Most importantly the LGO's findings indicate Mr X experienced avoidable stress and anxiety dealing with the dispute about how much his father should be charged for his care. The situation also caused anxiety for Mr Y, who was charged more than he should have by the Council. The Council has apologised in writing to Mr X and provided a full refund. The Council is in the process of issuing apologies to a further sixty service users whom the LGO has recommended that we refund.

5. FINANCIAL IMPLICATIONS

The financial impacts are clear for the LGO's recommendation to identify any adults who have received 'enablement' care since April 2015, who, like Mr Y, should have been entitled to free intermediate care. Sixty service users have been identified since that date, who have been successful in their enablement and have thus been identified for refund of the first six weeks of enablement. These families are being contacted and a provision of £75k was made in the accounts last financial year for this purpose.

The wider implications of the changes in pathway and charging are more difficult to model, as they relate to the individual cohort of service users, but based on the 2017/18 enablement service users, the revised arrangements are broadly neutral for the local authority. In theory 239 service users entered the enablement pathway for whom the decision not to charge will cost a notional £85,000 per annum. However it is not that simple as for self-funders there is a cohort that will now no longer access the maximising independence offer and their fees will no longer be capped for the first six weeks. It is also possible that a handful of service users will now not benefit from receiving both a capped bed based intermediate care offer and up to six weeks free reablement.

6. LEGAL POWERS AND IMPLICATIONS

There is no right of appeal of the LGO's decision, and the Council is fully complying with all recommendations contained in the report. The amendments made to care pathways and charging policy are to clarify the availability of an intermediate care offer free of charge for up to six weeks, irrespective of the resource discussions with BNSSG CCG, although it is intended to review and integrate these pathways as quickly as possible. The Council is confident that its charging policy is fully compliant with the Care Act.

7. RISK MANAGEMENT

The primary risk with the proposals are that less service users (particularly self funders) will receive an enablement like service beyond those covered by the intermediate care offer.

8. EQUALITY IMPLICATIONS

An equality impact assessment is being prepared based on the modelling of the outcomes of changes to the care pathway. Given the LGO's time requirements this will need to follow this report, as it is intended that these changes are of an interim nature to better explore with BNNSG CCG a more integrated approach which fully assesses all of the impacts and consequences of the interim changes.

9. CORPORATE IMPLICATIONS

None not identified elsewhere.

10. OPTIONS CONSIDERED

There are no other options identified for responding to this report.

AUTHOR

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BACKGROUND PAPERS

Appendix One
Report by the Local Government and Social Care LGO Report 16th March 2018
Appendix Two
Interim Social Care Pathway Outline Guidance
Appendix Three
Interim Intermediate Care Policy

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
North Somerset Council
(reference number: 16 018 163)**

16 March 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X	Mr Y's son and his representative in this complaint
Mr Y	Mr X's father who received care at the Care Home

Report summary

Adult Care Services – Council: Charging

Mr X complained about his father's care charges. He says he would not have agreed to the care had the Council made it clear what the cost would be.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused to Mr Y and Mr X, we recommend the Council:

- apologise to Mr Y and Mr X for the injustice they have suffered as a result of the Council charging for intermediate care;
- send Mr Y a payment of £722.40. This is to recognise the financial loss he suffered by paying the Care Home six weeks of intermediate care fees he should not have paid; and
- reduce the invoice payable to the Council by £1,887.00 to recognise the additional financial injustice caused to Mr Y by the Council wrongly backdating the full cost of care for six weeks of intermediate care.

The Council agreed to our recommendations and has taken these steps.

We also recommend the Council should:

- review its adult social care charging policy and procedures to ensure they are compliant with the Care Act, specifically addressing charging for enablement care. The Council has agreed to this and says it will issue an intermediate care policy to clearly distinguish between intermediate care and enablement;
- notify staff in the relevant Social Care teams and the Financial Assessments and Benefits Team of policy and procedural changes and circulate the new policy and procedures; and
- identify any adults who have received 'enablement' care since April 2015, who, like Mr Y, should have been entitled to free intermediate care. The Council should write to those affected, or where necessary a suitable representative, and arrange to refund their costs for the first six weeks of their enablement package. The Council has not yet agreed to this recommendation.

As the Council has not yet accepted some of our recommendations, we have used our powers to issue this report.

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The complaint

1. Mr X complained about his father's care charges. He says he would not have agreed to the care had the Council made it clear what the cost would be.

Legal and administrative background

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

Intermediate care and charging for care

4. Where a council arranges care and support to meet a person's needs, it may charge the adult, except where it must arrange care and support free of charge. (*Care and Support Statutory Guidance, section 8.2*)
5. Where councils provide intermediate care and reablement support to those who need it, they must provide it free of charge for the first six weeks. (*Care and Support Statutory Guidance, sections 2.60, 2.61*)
6. Intermediate care and reablement are defined in law as facilities or resources provided to an adult by a council under the Care Act 2014 which:
 - "consist of a programme of services, facilities or resources;
 - are for a specified period of time ("the specified period"); and
 - have as their purpose the provision of assistance to an adult to enable the adult to maintain or regain the ability needed to live independently in their own home". (*Care and Support (Preventing Needs for Care and Support) Regulations 2014, section 2*)
7. Statutory guidance says "There is a tendency for the terms 'reablement', 'rehabilitation' and 'intermediate care' to be used interchangeably. The National Audit of Intermediate Care categorises 4 types of intermediate care:
 - crisis response – services providing short-term care (up to 48 hours)
 - home-based intermediate care – services provided to people in their own homes by a team with different specialities but mainly health professionals such as nurses and therapists
 - bed-based intermediate care – services delivered away from home, for example, in a community hospital
 - reablement – services to help people live independently which are provided in the person's own home by a team of mainly care and support professionals". (*Care and Support Statutory Guidance, section 2.12*)

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8. Statutory guidance states intermediate care services “are provided to people, usually older people, after they have left hospital or when they are at risk of being sent to hospital. Intermediate care is a programme of care provided for a limited period of time to assist a person to maintain or regain the ability to live independently – as such they provide a link between places such as hospitals and people’s homes, and between different areas of the health and care and support system – community services, hospitals, GPs and care and support”. (Care and Support Statutory Guidance, section 2.14)
 9. Further guidance defines bed-based intermediate care specifically as “Assessment and interventions provided in a bed-based setting, such as an acute hospital, community hospital, residential care home, nursing home, stand-alone intermediate care facility, independent sector facility, local authority facility or other bed-based setting. Bed-based intermediate care aims to prevent unnecessary admissions to acute hospitals and premature admissions to long-term care, and to support timely discharge from hospital. For most people, interventions last up to 6 weeks. Services are usually delivered by a multidisciplinary team but most commonly by healthcare professionals or care staff (in care homes)”. (Intermediate care including reablement, National Institute for Health and Care Excellence, 2017)
 10. Where a council has decided to charge it must carry out a financial assessment of what the person can afford to pay. (Care and Support Statutory Guidance, section 8.16)
 11. In some circumstances councils can carry out ‘light-touch’ financial assessments. This includes when a person refuses a financial assessment. (Care and Support Statutory Guidance, sections 8.22 and 8.23)

Enablement care provided by this Council

12. This Council defines its enablement service on its website as “a service to help people to prepare to live at home again. It provides an opportunity to gain confidence, and regain skills lost, while staying in care. Enablement gives time to recover and make a decision about longer term care”. (North Somerset Council’s website - My services / Health and social care / Adults and older people / Find out about care homes / About care homes)
13. The Council says on its website “You will need to pay for, or make a contribution to, the care home cost for your stay”. It charges £120.40 a week for enablement for the first six weeks. The Council carries out a financial assessment if the period of care goes over six weeks.

How we considered this complaint

14. We have produced this report following the examination of relevant files and documents and interviews with the complainant.
15. We gave the complainant and the Council a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

What we found

What happened

16. Mr X’s father, Mr Y, lived with Mr X. Mr Y had an amputation in hospital.

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17. When Mr Y was ready for discharge the Council decided he needed 'residential enablement' because he would struggle at home without support. It said he needed support to regain his independence after an amputation, including emotional support to help him adapt. Mr X and Mr Y agreed to Mr Y moving because he was taking up a hospital bed.
 18. The Council says the social worker explained enablement to Mr Y, and explained how it charges people for their care depending on their finances. The Council gave Mr Y a finance form. The form says the weekly fixed charge for enablement was £120.40. Mr Y wanted to discuss the form with Mr X before signing it.
 19. The Council says the social worker then spoke to Mr X on the telephone and explained how the Council would charge for care. She asked Mr X for the signed form she had left with Mr Y. The Council says the social worker told Mr X that Mr Y would be responsible to pay the full cost of his care if a financial assessment found he was over the capital threshold. The capital threshold applies to all people in England who have care needs. Those with savings and capital over £23,250 must pay for support.
 20. The Council considered placements for Mr Y and sent Mr X a list of care homes in the area with vacancies, that did not charge more than the Council was willing to pay.
 21. Mr Y moved to the Care Home in June 2016 and stayed there for 14 weeks. The Care Home wrote to Mr X at the beginning of his stay and said both it and Mr Y had a contract with the Council. In this letter, the Care Home stated "*your contributions to the fee are determined by the Social Services and documented in their financial agreement. This will normally have been agreed between the Social Services and yourself*". It attached an invoice for £898.57 which was for 20 days at £314.50 a week.
 22. Mr X challenged this invoice. The Care Home told him it should have sent the invoice to the Council. This was the amount the Council owed to the Care Home for this period of care. The Council told Mr X in mid-June the invoice was incorrect and Mr Y should only pay £120.40 a week to the Care Home. It recorded that it told Mr X if the placement became permanent this charge would be recalculated and would be higher from the beginning of Mr Y's placement. The Council recorded that in another telephone call at the end of June, Mr X said he thought Mr Y would be over the capital threshold. It recorded telling Mr X this meant Mr Y would need to pay the full cost of his care.
 23. The Council posted two financial assessment forms to Mr X, and handed a paper copy to Mr X and Mr Y, between July and August. It tried chasing Mr X and Mr Y for a completed form on multiple occasions.
 24. In mid-July, the Council highlighted Mr Y had been at the Care Home for more than six weeks and so he needed to be financially assessed. The social worker was still waiting to receive the completed financial assessment form.
 25. In August, the Council decided it would need to charge Mr Y for the full cost of his care because he had not returned the financial assessment form. The Council backdated the full cost of care to the date Mr Y moved into the Care Home from hospital.
 26. Mr X says the Council told him it tended not to extend enablement past 12 weeks. He says it said this was flexible if a person's recuperation was ongoing and it was possible they could return home.

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27. In December 2016, the Council spoke to Mr X and explained it had charged Mr Y the full cost of his care because it had not received a completed financial assessment form. Mr X told the Council it had said Mr Y was entitled to 12 weeks care, charged at £120.40 a week. The Council explained its funding procedures and sent Mr X another financial assessment form. It sent a moving into care and charging leaflet to Mr X.
 28. Mr Y then received an invoice from the Council for £4,403, which was £314.50 a week for the 14 weeks he received care. This was the remaining cost of care the Council calculated was payable to it after deducting £120.40 weekly which Mr Y had already paid to the Care Home. The Council then decided to put a hold on the invoice until it had resolved the disagreement about what Mr Y should pay.
 29. In January 2017 Mr X sent a complaint to the Council. He said Mr Y had not been able to return home until the Council had installed modifications and aids in his home. He told the Council the family believed enablement was a stepping stone to Mr Y returning home and that the Council would pay for it. Mr X explained they would not have agreed to Mr Y moving to the Care Home if the family had known there would be a charge. The Council sent its stage one complaint response on 1 February. It listed the occasions on which it had informed Mr X and Mr Y of care charges.
 30. In February 2017 Mr X sent a stage two complaint. He summarised the reasons he and Mr Y believed the Council was funding the placement.
 - It had provided a list of homes whose charges were within the maximum rate the Council would pay, including this Care Home.
 - The Council had said one of the care homes on the list charged more than it would pay.
 - The letter from the Care Provider had said the contract was between it and the Council.
 - The Council had told Mr X that Mr Y should not pay the additional fee the Care Home had included in its invoice.
 31. The Council wrote to Mr X in March. It said it accepted there was a degree of confusion in its conversations with Mr X. It said however it was satisfied it told Mr X several times there would be potential charges for the enablement placement. It said it was still waiting for a completed financial assessment form, and explained until Mr X had returned this, Mr Y would pay the full cost for care. It explained if they returned the form the Council could recalculate Mr Y's charges based on his financial circumstances which could reduce the charges.
 32. Mr X says the Council never told him or his father that Mr Y would have to pay towards this care, and said it would fully fund the placement. Mr X has experienced stress and anxiety dealing with the dispute. Mr X says the anxiety from the situation is negatively impacting on Mr Y's health.
 33. Mr Y has paid all fees he was told he owed to the Care Home. He paid £120.40 a week for the duration of his stay. Mr Y has not paid the fees the Council says he owes to it. It has invoiced Mr Y an additional £314.50 a week for the duration of his stay, because he did not complete a financial assessment.

‘Enablement’ – the Council’s position

34. The Council has provided evidence there is another recovery programme in its area which is bed-based intermediate care. It is described in its leaflet as a “*therapy led rehabilitation service*” which is short-term and aims to “*increase your independence and plan with you for your discharge back home*”. This service is jointly commissioned by the Council and the NHS and is free of charge for six weeks.
35. In communications with us, the Council stated “*The enablement service has similarities [to its reablement service and its recovery programme] but is not an intermediate care service, as the service is utilised by service users who have been assessed as requiring permanent residential or nursing care*”. It described enablement as “*an access route to permanent care*”.
36. The Council stated enablement “*recognises that although the client has been assessed for residential and nursing care we have encouraged the care providers and clients to recognise the enablement potential of all service users throughout the lifetime of the placement*”.
37. The hospital had recorded that Mr Y had limited potential for further rehabilitation so he was found medically fit for discharge. The Council says he refused a prosthesis. For these reasons, the Council told us Mr Y was not suitable for its intermediate care. The Council said it is likely the input from physiotherapy was limited.
38. The Council says Mr Y’s needs could have been met at home with a large reablement package of care, and support from Mr X. However, Mr X was unwell at this time and the home environment was not ready for Mr Y to return. Without his son’s assistance, the Council says it was not possible for Mr Y to return home at that time.
39. The Council says enablement was chosen to provide an adjustment for Mr X and Mr Y. The intention was then to determine the long-term arrangements for care. The Council says during enablement, it was very difficult to engage with Mr X about discharge plans.

Analysis

‘Enablement’ as intermediate care under the Care Act

40. Mr Y’s care followed an amputation in hospital. The Council told him enablement would help his recovery, it was a stepping stone and it would help Mr Y regain sufficient mobility to return home. The care package was to increase his independence and provide emotional support to help him adapt to life with his amputation. Mr Y could carry out more tasks independently at the end of his stay than he could when he left hospital. He now has no package of care and lives back at home with Mr X.
41. The Council identified desired outcomes for Mr Y’s enablement package. These included “*To regain independence following amputation*”. The occupational therapy service arranged equipment, assessed Mr Y’s transfers, taught him techniques for transfers and helped him to practice these. The physiotherapy service visited on multiple occasions with the occupational therapist however the physiotherapist’s level of input is not as clear.

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42. The Council said if Mr Y had returned home immediately, he would have needed a large package of reablement in the home. This shows Mr Y had potential to engage in a reablement package and the Council has not explained why he could not engage in the same way in intermediate care in a care home.
 43. The Council has used two conflicting definitions of enablement – one where the individual is assessed as requiring permanent residential or nursing care and another where the individual receives help to prepare to live at home. This is a concern and throws uncertainty on the Council's position.
 44. The Council has not explained the material difference between its recovery programme, which would also appear to be bed-based intermediate care, and enablement, aside from the recovery programme being partly NHS-funded. Nor has it provided an intermediate care policy that explains the difference. The Council has not adequately explained why Mr Y did not meet the criteria for this service, and how the support he received differed from this. The Council has now accepted Mr Y was eligible for intermediate care.
 45. The Council's enablement service was developed in 2011 and modelled on the already existing reablement service, but was designed to be provided in care homes instead of people's own homes. The Council prepared a report in March 2012 which explained the enablement pathway and said, "*When a service user has reached their full potential they leave enablement and either remain in a care home (perhaps being able to move from nursing care to residential care) or return home either independently or with a package of homecare*". Furthermore, the Council defines enablement on its website as being "*to help people to prepare to live at home again*".
 46. Mr Y received time-limited support from carers, occupational therapy and physiotherapy in a residential care home to help him recover from an operation to amputate his leg in order for him to regain his independence. He subsequently returned to his son's home, where he lived before his hospital admission, 14 weeks later. Mr Y was not assessed for permanent residential care.
 47. The Council's definition of 'enablement' on its website is the same as bed-based intermediate care and the Council has not convinced us otherwise. Simply referring to intermediate care by another name does not allow a council to charge for it. The Council's policy to charge for the first six weeks of enablement, in cases where that service is aimed at supporting the person to return home, does not meet the requirements of the Care Act. This is fault.
 48. The Council should not have charged Mr Y for the first six weeks of intermediate care and it was at fault in doing so. Mr Y paid £120.40 a week to the Care Home for the first six weeks of his intermediate care. This means Mr Y paid £722.40 more than he should have to the Care Home.
 49. When the Council did not receive a financial assessment from Mr Y it then charged him the full cost of care from day one. However, as Mr Y should have received the first six weeks of enablement free, it should not have invoiced him a further £314.50 a week for those six weeks. This was in addition to the £722.40 he had already paid for that period. This means the Council invoiced Mr Y for £1,887 more than it should have. It was entitled to charge Mr Y the full cost of care after the first six weeks as he had not completed the financial assessment.

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50. Mr X experienced avoidable stress and anxiety dealing with the dispute about how much his father should be charged for his care. The situation also caused anxiety for Mr Y, who has been charged more than he should have by the Council.
 51. The Council has not received a completed financial assessment form despite providing the form to Mr X and Mr Y on many occasions. Now we have clarified what the Council is entitled by law to charge for, it is open to Mr X and Mr Y to complete a financial assessment form. This will enable the Council to calculate Mr Y's contribution based on his financial circumstances. The Council is entitled to charge Mr Y the full cost of care after the first six weeks if he does not consent to a financial assessment.
 52. The Council does not accept it provided Mr Y intermediate care under the name 'enablement', and says the fault was instead that Mr Y should have received the recovery programme. The Council has accepted the recommendations we made to remedy injustice to Mr Y personally because of this.
 53. The Council says the information it has published about its enablement service is misleading and the leaflet should say the service is for people who are assessed as needing permanent care rather than for those who can return home. The Council says as a result of our findings, it intends to review its enablement offer. It is open to the Council to redefine the scope of its enablement service. However, in doing so it should ensure the information published reflects the service it provides, and that it is clearly distinguishable from intermediate care under the Care Act.
 54. The Council must also address the issue that, until now, the evidence clearly shows this is not what its enablement service was solely intended for. We do not accept the Council's assertion that enablement was only meant for those assessed as needing permanent care because this conflicts directly with the information it published on its website about enablement and the evidence we found in Mr X's case. Our recommendation related to others affected takes the Council's view of fault into account, that is, that Mr X should have been provided intermediate care but was not.
 55. The Council says it would need to withdraw its enablement service if we decide it cannot charge for it for the first six weeks. It said this would not be in the best interests of its service users who have seen great improvements in independence. Not all enablement packages provided by the Council will have resulted in the person returning home and therefore not all users of the Council's enablement package would have been eligible for intermediate care. Also, a return home has not necessarily been the primary aim for all enablement packages the Council has provided and in those cases the service users would not have been eligible for intermediate care. We cannot therefore say **all** enablement users were eligible for intermediate care. However, Mr Y was eligible for intermediate care but received 'enablement' and it is likely others have also been eligible for the first six weeks of intermediate care free but received 'enablement' and so were wrongly charged. There may have been others affected by the Council wrongly providing an enablement package when they met the criteria for bed-based intermediate care.

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56. We recognise the challenges councils face in the current financial climate. However, our role is to assess whether councils are following the current law and guidance, not to decide whether the law and guidance is appropriate. We take this opportunity to remind the Council of its duties under the Care Act to actively promote wellbeing and independence, to intervene early, help people retain or regain their skills and confidence, and prevent need or delay deterioration wherever possible. The Council should ensure it continues to consider these principles in any subsequent decisions about redefining the scope of the service and how it charges for it.

Clarity of information

57. There was a misunderstanding between Mr X and the Council about what the Council would fund. The Council told Mr X it would not fund placements which cost more than a certain amount. As the home Mr Y was staying in was below this level, Mr X believed this meant the Council would pay the full cost of the care. The letter from the Care Home to Mr X said the Care Home's contract was with the Council, but the letter also said that Mr Y's contract was also with the Council. The letter said the Council would let him know what his contribution would be.
58. We acknowledge Mr X says he and Mr Y were not aware there would be any charge until three months later, which they feel is a significant delay. The evidence shows the Council provided some information verbally to Mr X and Mr Y, and information was available on its website. The Council provided a financial assessment form to Mr Y before he moved into the Care Home, which also provided information about charges. The form states a charging for care leaflet will be attached to the form, however there is no evidence in Council records that it provided a charging leaflet to Mr X or Mr Y until December 2016. Mr X says the Council provided a charging leaflet some weeks after Mr Y had moved into the Care Home.
59. The invoice the Care Home sent to Mr Y was not correct. This is fault. The Care Home provided a service which was arranged by, and on behalf of, the Council. When a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. Therefore, we hold the Council responsible for this fault. Furthermore, when Mr X called the Council to challenge this invoice it told him Mr Y only needed to pay the contribution of £120.40 weekly, unless his placement became permanent. The Council has since acknowledged this caused confusion as it did not explain to Mr X at that time that Mr Y could be charged more after a financial assessment. This is fault.
60. There was therefore some confusion caused by incorrect invoices from the Care Home, and the Council then telling Mr X that Mr Y only had to pay £120.40 weekly. The Council could have provided a charging for care leaflet earlier. However, the Council had multiple conversations with Mr X about care charges and it attempted to carry out a financial assessment on multiple occasions. Overall the evidence shows the Council communicated to Mr Y and Mr X that:
- there would be a charge for enablement; and
 - Mr Y needed a financial assessment which could change the amount charged.
61. The evidence shows these conversations took place before Mr Y moved into the Care Home.

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62. When Mr X pointed out the Care Home's mistake on the invoice it sent, it adjusted the invoice. The Council explained to Mr X by the end of June 2017 that if Mr Y had savings over the capital threshold he would need to pay the full cost of his care. The faults identified therefore did not lead to a significant injustice. The charges for Mr Y's care after the first six weeks are charges the Council is entitled to make, and are properly owed. The Council has discretion to provide intermediate care at no charge for longer than six weeks, and it is now open to the Council to consider its discretion.
63. The information the Council shared with Mr Y and Mr X related to a policy which does not meet the statutory guidance regarding charges during the first six weeks of intermediate care.

Conclusions

64. There was some fault in how the Council communicated information to Mr X and Mr Y about care charges and the need for a financial assessment. These faults did not lead to injustice as overall the Council made clear Mr Y would be charged for enablement and that a financial assessment may result in the charges changing.
65. However, the Council is at fault for its policy to charge for enablement care, when that care is intermediate care under the Care Act 2014.
66. This fault led to stress and anxiety for Mr X, and anxiety for Mr Y, who was invoiced for six weeks' care which the law says he should not have been.

Recommendations

67. To remedy the injustice caused to Mr Y and Mr X, we recommend the Council:
- apologise to Mr Y and Mr X for the injustice they have suffered as a result of the Council charging for intermediate care;
 - send Mr Y a payment of £722.40. This is to recognise the financial loss he suffered by paying the Care Home six weeks of intermediate care fees he should not have paid; and
 - reduce the invoice payable to the Council by £1,887.00 to recognise the additional financial injustice caused to Mr Y by the Council wrongly backdating the full cost of care for six weeks of intermediate care.
68. The Council agreed to our recommendations and has taken these steps.
69. We also recommend the Council should:
- review its adult social care charging policy and procedures to ensure they are compliant with the Care Act, specifically addressing charging for enablement care. The Council has agreed to this and says it will issue an intermediate care policy to clearly distinguish between intermediate care and enablement;
 - notify staff in the relevant Social Care teams and the Financial Assessments and Benefits Team of policy and procedural changes and circulate the new policy and procedures; and

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- identify any adults who have received 'enablement' care since April 2015, who, like Mr Y, should have been entitled to free intermediate care. The Council should write to those affected, or where necessary a suitable representative, and arrange to refund their costs for the first six weeks of their enablement package. The Council has not yet agreed to this recommendation.
70. As the Council has not yet accepted some of our recommendations, we have used our powers to issue this report.
71. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

72. There was fault by the Council which caused injustice to Mr X, Mr Y and potentially to others who have received enablement in this Council's area when the service provided met the criteria for intermediate care. The Council should take the action identified in the recommendations section to remedy that injustice.

Social Care Pathway – Interim guidance

Identified Needs	Strengths identified	Statutory Service Offer for outstanding needs	Charging	Temporary alternative provision
<p><u>Ongoing Care Offer</u></p> <p>Long term/ongoing eligible social care needs</p>	<ul style="list-style-type: none"> Family support support networks community/voluntary sector/commercial support ability 	<ul style="list-style-type: none"> Steady State POC OR Steady State Placement 	<p>Subject to financial assessment.</p> <p>Chargeable in accordance with charging policy from service start.</p> <p><u>Placement:</u> INTERIM charge until financial assessment. Backdate assessed charge to the start of the permanent stay.</p>	<p><i>If no POC available – Short Stay (Home Care Pending Bed): chargeable from day 1 in accordance with charging policy and subject to financial assessment.</i></p>
<p><u>Maximising Independence Offer</u></p> <p>Unclear long term needs (i.e. potential to improve)</p>	<ul style="list-style-type: none"> Family support support networks community/voluntary sector/commercial support potential ability/opportunity to improve 	<ul style="list-style-type: none"> Reablement POC OR Bed based intermediate care 	<p>Free of Charge for all (LA funded and SF) whilst reablement needs exist or up to 42 days for identified issue whichever is the sooner.</p>	<p><i>If no reablement POC available – Bed based intermediate care: non chargeable for all (LA funded and SF) whilst reablement needs exist or up to 42 days, whichever is the sooner.</i></p>
<p><u>Short Stay Offer</u></p> <p>Unable to remain at home safely with existing support/need for carer break</p>	<p>Exhausted support options</p>	<p>Short stay provision</p> <p>Crisis:</p> <ul style="list-style-type: none"> Emergency placement <p>Planned:</p> <ul style="list-style-type: none"> Respite 	<p><u>Emergency placement:</u> non chargeable for first week then charged in accordance with care plan.</p> <p><u>Respite:</u> Charged per day at a fixed rate charge, based on your age, for up to 28 days each financial year.</p> <p>Chargeable over 28 days according to assessed charge.</p>	<p>N/A</p>

North Somerset Intermediate Care Offer

Care Act 2014 definition of Intermediate care

2.9 – Intermediate care is a structured programme of care provided for a limited period of time, to assist a person to maintain or regain the ability to live independently at home – Reablement is a particular type of intermediate care, which has a stronger focus on helping the person to regain skills and capabilities to reduce their needs, in particular through the use of therapy and minor adaptations

2.10 – bed-based intermediate care- services delivered away from home, for example in a community hospital

2.11 – there should be a greater use of qualified staff from Health and Social Care working together to provide intermediate care.

North Somerset Offer

To provide intermediate care to those individuals who meet the required criteria and structured programme of care as defined under the Care Act (2014)

Intermediate care will not be a universal service offer; it will be provided to those who meet the legally defined criteria. For those individuals where there is no requirement for an intermediate care service they will move directly to an ongoing package of care and support or placement.

If they are identified as an ongoing package of care, but the Dom Care is not available they can be offered a home care pending bed and they will be charged from day one at their assessed Dom Care rate. (calculated on the PoC required).

Intermediate care is for a period of **up to 6 weeks** and will be continuously reviewed

The criteria for the provision of an intermediate care service, which may be either bed based or community based is as follows:

- You are expecting the level of care need to reduce and have achievable therapy-led goals over the period of **up to 6 weeks**- which will be continually reviewed from week 1.
- You are expecting the individual to gain or retain the ability to live independently at home.
- The individual is not experiencing an acute episode of a chronic condition
- The individual has not previously had intermediate care intervention for the same issue
- Not End of Life

If you are expecting the need to remain on going then they do not meet the criteria for intermediate care offer and should proceed to long term services.

Care Act 2014 - Charging for intermediate care

2.46 – the regulations require that intermediate care and reablement provided **up to 6 weeks**, and minor aids and adaptations provided up to the value £1000.00 must always be free of charge.

2.47 – this must be provided free of charge for a period of **up to 6 weeks**, this is for all adults, irrespective of whether they have ongoing needs for care and support

2.48 – whilst they are both time limited interventions, neither intermediate care nor reablement should have a strict time limit since the period of time for which the support is provided should depend on the needs and outcomes of the individual.

North Somerset Charging

This means the position of the Authority will be that irrespective of funding stream, any period of intermediate care regardless of the place in which it is provided is free to the Service User until they reach an ongoing level of care need or **up to 6 weeks**,